MISSISSIPPI CODE

1972

ANNOTATED

ADOPTED AS THE OFFICIAL CODE OF THE
STATE OF MISSISSIPPI
BY THE
1972 SESSION OF THE LEGISLATURE

COURT RULES

March 2021 Supplement

to the

2020 Two-volume Edition

Prepared by the Editorial Staff of the Publisher

LexisNexis®

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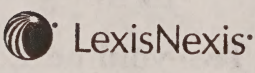
ISBN 978-1-5221-8708-0



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(Pub. 44510)

PREFACE

Use of Rules Supplement; format.

The March 2021 Supplement to the 2020 two-volume Edition of the Mississippi Court Rules Annotated is a publication of LexisNexis. It has been edited, annotated and indexed by the staff of the publishers. The Supplement reflects all changes and additions to the Rules, the official Comments and Notes, and the Forms received since the publication of the 2020 two-volume Rules Edition; the annotations are reviewed and updated, providing the user with the most current and useful information.

Each set of rules included in this Supplement will be followed by an index if the Supplement contains new rules for the set or if there are amendments to existing rules that necessitate changes in the index appearing in the 2020 two-volume Edition.

The material contained in this Supplement will be incorporated into the 2021 two-volume Edition of the Mississippi Court Rules Annotated.

Scope of rules and annotations.

This Supplement includes all changes and additions to the Rules, the official Comments and Notes, and the Forms that have taken place since publication of the 2020 two-volume Edition up to and including amendments received by the publisher through February 18, 2021. In addition, notes construing the Rules have been taken from the reports of decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal Series
Mississippi College Law Review
Mississippi Law Journal

The annotations also include Editor's notes inserted by the publisher's editorial staff to explain references or to call attention to obvious errors, inconsistencies or ambiguities in the Rules, the official Comments and Notes, and the Forms and to provide advance information on proposed new rules. Also, brackets have been editorially inserted around material in the text, when

necessary, to correct misspellings, punctuation or language and incorrect references to the Rules, sections of the Code, titles of positions, or names of institutions.

Amendments, additions, changes, and revisions of rules.

Amendments, additions, changes, and revisions since the 2020 two-volume Edition of the Mississippi Court Rules and included in this Supplement are to the following:

Mississippi Rules of Civil Procedure

Rule 63 (Editor's Note regarding apparent error in the Advisory Committee Historical Note)

Federal Rules of Appellate Procedure, with 5th Circuit Rules and Internal Operating Procedures

FRAP 35
5th Circuit Rule 35 I.O.P.
FRAP 40

Uniform Local Rules of the United States Bankruptcy Courts for the Northern and Southern Districts of Mississippi

Rule 1001-1
Rule 3007-1
Rule 4001-1
Rule 4002-1

Information, suggestions, comments, and questions.

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March 2021 LexisNexis

MISSISSIPPI RULES OF CIVIL PROCEDURE

Adopted Effective January 1, 1982

Rule
63. Judge's inability to proceed.

Rule 5. Service and filing of pleadings and other papers.

JUDICIAL DECISIONS

Service upon attorney.

Correspondence between employer's counsel and claimant's treating physician was not an impermissible non-consensual ex parte communication because the claimant's counsel was copied on the correspondence requesting clarification of the physician's opinions, but made no objection to the communication or the physician's response in a letter report. Therefore, the administrative judge and the Mississippi Workers' Compensation Commission did not err in considering the physician's letter report. Jones v. Univ. of Miss. Med. Ctr., — So. 3d —, 2021 Miss. App. LEXIS 7 (Miss. Ct. App. Jan. 5, 2021).

Rule 12. Defenses and objections — when and how presented — by pleading or motion — motion for judgment on the pleadings.

JUDICIAL DECISIONS

Waiver.

Property owner's former paramour waived the issue of improper venue in a replevin action because the paramour failed to plead improper venue as an affirmative defense or to raise the issue in a timely filed motion. The paramour first raised the issue of venue in the paramour's post-trial motion to set aside the circuit court's final judgment. Massey v. Neely, — So. 3d —, 2021 Miss. App. LEXIS 25 (Miss. Ct. App. Jan. 12, 2021).

Rule 31. Depositions upon written questions.

JUDICIAL DECISIONS

Illustrative cases.

Correspondence between employer's counsel and claimant's treating physician was not an impermissible non-consensual ex parte communication because the claimant's counsel was copied on the correspondence requesting clarification of the physician's opinions, but made no objection to the communication or the physician's response in a letter report. Therefore, the administrative judge and the Mississippi Workers' Compensation Commission did not err in considering the physician's letter report. Jones v. Univ. of Miss. Med. Ctr., — So. 3d —, 2021 Miss. App. LEXIS 7 (Miss. Ct. App. Jan. 5, 2021).

Rule 41. Dismissal of actions.

JUDICIAL DECISIONS

Failure to prosecute.

Because the delay in a guest's case against a casino was excusable, and the casino failed to prove that it suffered any actual prejudice from the delay, the circuit court abused its discretion in dismissing the guest's complaint for failure to prosecute; the lesser sanctions presented by the guest's counsel would have better served the interest of justice, and there was nothing in the record to support the notion that the delay in prosecution was intentional. Leasy v. Sw Gaming, Llc, — So. 3d —, 2021 Miss. App. LEXIS 53 (Miss. Ct. App. Feb. 2, 2021).

Rule 42. Consolidation: separate trials.

JUDICIAL DECISIONS

In general.

There was no abuse of discretion in any manner in the chancery court's ordering the agreed-to consolidation because two actions, both pending before the chancery court, plainly involved a common question of law or fact; in one action, a grantee sought to void a purchaser's tax deeds on the subject property, and the grantor's estate sought damages for the timber cut and removed from the property, and the interpleader action concerned the proceeds from the 1994 timber harvest on the property. Alexander v. Musgrove, — So. 3d —, 2021 Miss. App. LEXIS 3 (Miss. Ct. App. Jan. 5, 2021).

Rule 54. Judgments; costs.

JUDICIAL DECISIONS

Appeal.

Supreme Court found that it had jurisdiction over the appeal but that appellant did not designate the documents on which he based his appellate challenge to the chancellor's decision granting authority to the executor of a decedent's estate to disburse funds to the estate's attorneys. Therefore, the chancellor's decision that appellant had not probated a claim against the estate and thus lacked standing to challenge payment of estate expenses was not subject to appellate review. Rogers v. Estate of Pavlou (in re Estate of Pavlou), — So. 3d —, 2021 Miss. LEXIS 1 (Miss. Jan. 14, 2021).

Rule 63. Judge's inability to proceed.

(a) *During trial.* If for any reason the judge before whom an action has been commenced is unable to proceed with the trial, another judge regularly sitting in or assigned under law to the court in which the action is pending may proceed with and finish the trial upon certifying in the record that he has familiarized himself with the record of the trial; but if such other judge is satisfied that he cannot adequately familiarize himself with the record, he may in his discretion grant a new trial.

(b) *After verdict or findings.* If for any reason the judge before whom an action has been tried is unable to perform the duties to be performed by the court after a verdict is returned, or after the hearing of a nonjury action, then any other judge regularly sitting in or assigned under law to the court in which the action was tried may perform those duties; but if such other judge is

satisfied that he cannot perform those duties, he may in his discretion grant a new trial. (Comments repealed effective July 1, 2014; amended rule and advisory committee historical note, effective July 1, 2020.)

ADVISORY COMMITTEE HISTORICAL NOTE

Effective July 1, 2020, the caption for Rule 62 was amended to refer to a judge's inability to proceed rather than a judge's disability. [Amended effective July 1, 2020.]

Editor's Note — The reference to "Rule 62" in the Advisory Committee Historical Note above is an apparent error. The reference should probably be to "Rule 63."

Index to Rules of Civil Procedure

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DISCOVERY.
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SIGNATURES.
Discovery requests, responses, and objections, CivProc Rule 26.

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Rule 23.5. Mistrials.

JUDICIAL DECISIONS

Curative instructions.

Circuit court properly denied defendant's motion for a mistrial because the court not err by failing to give the jury a curative instruction regarding the State's alleged prejudicial statements, referring to "crimes" instead of "alleged crimes," during voir dire where the jury was fully advised and instructed on the proper application of law through jury instructions, heard the State's curative statements and reiteration that defendant was innocent until proven guilty, and the prospective jurors indicated general appreciation of that proposition. Aday-cazorla v. State, — So. 3d —, 2021 Miss. App. LEXIS 15 (Miss. Ct. App. Jan. 12, 2021).

Rule 105. Limiting evidence that is not admissible against other parties or for other purposes.

JUDICIAL DECISIONS

Limiting instructions.

Defendant failed to demonstrate constitutional ineffectiveness for defense counsel's failure to request a limiting instruction or a balancing test with regard to a prosecution witness's prior unsworn statements because the decision was trial strategy; the witness's prior sworn and unsworn statements coincided, and given the admissibility of his prior sworn inconsistent statements, any success in keeping his prior unsworn inconsistent statements out of the trial would have been minimal at most. Thames v. State, — So. 3d —, 2021 Miss. LEXIS 17 (Miss. Feb. 4, 2021).

Because defendant did not object at trial to the State's use of a prosecution witness's prior inconsistent statements (sworn or unsworn) or request a limiting instruction or a balancing test, the issue was barred from review absent plain error. Thames v. State, — So. 3d —, 2021 Miss. LEXIS 17 (Miss. Feb. 4, 2021).

Rule 402. General admissibility of relevant evidence.

JUDICIAL DECISIONS

Illustrative cases.

In defendant's trial for sexual battery of minor victims, who were residents of a home for children, evidence of an alleged incident in which one of the alleged victims urinated in someone's orange juice and evidence of inappropriate text messages by the alleged victim were irrelevant because neither incident tended to prove that the alleged victim manipulated the other alleged victim into fabricating allegations about defendant, who was a house parent, in retaliation for being punished by defendant. Copes v. State, — So. 3d —, 2021 Miss. App. LEXIS 54 (Miss. Ct. App. Feb. 2, 2021).

Rule 403. Excluding relevant evidence for prejudice, confusion, waste of time, or other reasons.

JUDICIAL DECISIONS

Illustrative cases.

Defendant failed to demonstrate constitutional ineffectiveness for defense counsel's failure to request a limiting instruction or a balancing test with regard to a prosecution witness's prior unsworn statements because the decision was trial strategy; the witness's prior sworn and unsworn statements coincided, and given the admissibility of his prior sworn inconsistent statements, any success in keeping his prior unsworn inconsistent statements out of the trial would have been minimal at most. Thames v. State, — So. 3d —, 2021 Miss. LEXIS 17 (Miss. Feb. 4, 2021).

Because defendant did not object at trial to the State's use of a prosecution witness's prior inconsistent statements (sworn or unsworn) or request a limiting instruction or a balancing test, the issue was barred from review absent plain error. Thames v. State, — So. 3d —, 2021 Miss. LEXIS 17 (Miss. Feb. 4, 2021).

Trial court had the discretion in defendant's trial for sexual battery of minors to limit the evidence from the counseling

sessions of a former resident of the home for children where defendant was a house parent when the court was concerned about wasting time and the amount of time spent on the former resident when the former resident, who alleged sexual abuse by defendant, was not one of the residents who was named as a victim in the indictment. Copes v. State, — So. 3d —, 2021 Miss. App. LEXIS 54 (Miss. Ct. App. Feb. 2, 2021).

Rule 412. Sex-offense cases: the victim's sexual behavior or predisposition.

JUDICIAL DECISIONS

Illustrative cases.

Trial court did not abuse its discretion in defendant's trial for sexual battery of minors by excluding questioning of one of the alleged victims about the sexual nature of the rule violations of the home for children where the victim lived and where defendant was a house parent. Furthermore, the jury still heard why the victim was regarded as "the bad one," the victim admitted to violating rules, and the victim admitted that the victim hated the home for children. Copes v. State, — So. 3d —, 2021 Miss. App. LEXIS 54 (Miss. Ct. App. Feb. 2, 2021).

Rule 503. Privilege between patient and physician or psychotherapist.

JUDICIAL DECISIONS

Applicability.

Patient-physician privilege under Mississippi Rules of Evidence was not applicable in workers' compensation proceedings. Although Mississippi courts have found that a patient-physician privilege does exist in the workers' compensation context, under Mississippi workers' compensation law, the patient-physician privilege is removed for medical and surgical treatment. Jones v. Univ. of Miss. Med. Ctr., — So. 3d —, 2021 Miss. App. LEXIS 7 (Miss. Ct. App. Jan. 5, 2021).

Rule 611. Mode and order of examining witnesses and presenting evidence.

JUDICIAL DECISIONS

Hostile witness.

There was no plain error in the trial court's finding that the State demonstrated the threshold requirements for the rule because a prosecution witness had previously admitted under oath being a member of a gang and, at defendant's trial, denied it; the witness did not deny making any prior statement which the State questioned him about, and the transcripts containing his prior sworn testimonies, along with his prior unsworn written statements made to investigators, were submitted into evidence. Thames v. State, — So. 3d —, 2021 Miss. LEXIS 17 (Miss. Feb. 4, 2021).

Rule 613. Witness's prior statement.

JUDICIAL DECISIONS

Proper foundation.

There was no plain error in allowing the State to use a prosecution witness's unsworn statements because the inconsistency requirement of subsection (d)(1)(A) was met, as were the foundational requirements, so as to allow for proper cross-examination by the defense; because the witness often did not deny having made most of his prior unsworn statements, claiming at times that he had lied when he made the statement, there arguably was no use for that particular statement as impeachment evidence. Thames v. State, — So. 3d —, 2021 Miss. LEXIS 17 (Miss. Feb. 4, 2021).

Rule 702. Testimony by expert witnesses.

JUDICIAL DECISIONS

Illustrative cases.

Court properly admitted expert testimony because the court considered not only the expert's qualifications but also the relevance and reliability of her expert testimony concerning shaken baby syndrome; the record clearly showed that the trial judge had the issues regarding the actual testimony squarely before it when it determined that the expert was qualified to testify. Clark v. State, — So. 3d —, 2021 Miss. LEXIS 19 (Miss. Feb. 4, 2021).

Rule 801. Definitions that apply to this article; exclusions from hearsay.

JUDICIAL DECISIONS

Statement.

Defendant failed to demonstrate constitutional ineffectiveness for defense counsel's failure to request a limiting instruction or a balancing test with regard to a prosecution witness's prior unsworn statements because the decision was trial strategy; the witness's prior sworn and unsworn statements coincided, and given the admissibility of his prior sworn inconsistent statements, any success in keeping his prior unsworn inconsistent statements out of the trial would have been minimal at most. Thames v. State, — So. 3d —, 2021 Miss. LEXIS 17 (Miss. Feb. 4, 2021).

There was no plain error in allowing the State to use a prosecution witness's unsworn statements because the inconsistency requirement of subsection (d)(1)(A) was met, as were the foundational requirements, so as to allow for proper cross-examination by the defense; throughout the State's examination of the witness, he was given the opportunity to admit, deny, or explain his prior sworn statements, and he continuously contradicted in fact what he had previously testified to under oath. Thames v. State, — So. 3d —, 2021 Miss. LEXIS 17 (Miss. Feb. 4, 2021).

Rule 803. Exceptions to the rule against hearsay — regardless of whether the declarant is available as a witness.

JUDICIAL DECISIONS

Business records.

Trial court did err in defendant's trial for embezzlement by allowing a warranty manager for a trucking company to testify about the data the manager used to compile a spreadsheet on defendant's repair orders for the company or by admitting electronic payments and truck stop receipts into evidence. The information and data the manager obtained from an elec-

tronic payment service system belonged to the trucking company, while the electronic payments and truck stop receipts were properly authenticated by the general manager for the truck stop. Russell v. State, — So. 3d —, 2021 Miss. App. LEXIS 57 (Miss. Ct. App. Feb. 2, 2021).

Rule 902. Evidence that is self-authenticating.

JUDICIAL DECISIONS

Illustrative cases.

Trial court did err in defendant's trial for embezzlement by allowing a warranty manager for a trucking company to testify about the data the manager used to compile a spreadsheet on defendant's repair orders for the company or by admitting electronic payments and truck stop receipts into evidence. The information and data the manager obtained from an electronic payment service system belonged to the trucking company, while the electronic payments and truck stop receipts were properly authenticated by the general manager for the truck stop. Russell v. State, — So. 3d —, 2021 Miss. App. LEXIS 57 (Miss. Ct. App. Feb. 2, 2021).

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MISSISSIPPI RULES OF APPELLATE PROCEDURE

Rule 14. Findings of fact and calculations during the course of an appeal.

JUDICIAL DECISIONS

Calculations.

Court of appeals was unable to consider a purchaser's purported assignment of error that the chancery court incorrectly calculated the amount a grantee owed him as reimbursement for property taxes paid because the purchaser failed to correctly assert the assignment of error; there was no indication in the record that a document the purchaser submitted was filed in the chancery court record prior to the chancery court issuing its judgment upon remand. Alexander v. Musgrove, — So. 3d —, 2021 Miss. App. LEXIS 3 (Miss. Ct. App. Jan. 5, 2021).

Court of appeals was unable to consider a purchaser's purported assignment of error that the chancery court incorrectly calculated the amount a grantee owed him as reimbursement for property taxes paid because the purchaser failed to correctly assert the assignment of error; there was no indication in the record that a document the purchaser submitted was filed in the chancery court record prior to the chancery court issuing its judgment upon remand.

Rule 28. Briefs.

JUDICIAL DECISIONS

Failure to cite authority.

In an appeal of a a child-custody modification that reduced the father's visitation allowance from four weekends per month to two, the father's brief was deficient because he merely submitted complaints of the chancery court's alleged errors without providing any supporting caselaw, Miss. R. App. P. 28(a)(7), placing the appeal beyond the appellate court's need to consider it. Carter v. Carter, — So. 3d —, 2021 Miss. App. LEXIS 56 (Miss. Ct. App. Feb. 2, 2021).

Because a purchaser cited no legal authority for his proposition, he failed to comply with the requirement that an appellant's arguments had to be supported by the reasons for those contentions, with citations to the authorities, statutes, and parts of the record relied on. Alexander v. Musgrove, — So. 3d —, 2021 Miss. App. LEXIS 3 (Miss. Ct. App. Jan. 5, 2021).

Rule 36. Costs.

JUDICIAL DECISIONS

Illustrative cases.

Because "costs" of appeal did not include attorney's fees, a purchaser's assignment of error that the chancery court's judgment upon remand failed to include judgment for cost of his appeal was without merit. Alexander v. Musgrove, — So. 3d —, 2021 Miss. App. LEXIS 3 (Miss. Ct. App. Jan. 5, 2021).

Rule 46. Admission, withdrawal, and discipline of attorneys.

JUDICIAL DECISIONS

Conduct of counsel.

Defendant was not denied the right to counsel of choice when defendant's out-of-state counsel was prohibited from further questioning witnesses after the trial court became concerned that counsel had violated the rules of discovery, attempted to circumvent the court's prior ruling, and had repeatedly challenged the court's rulings during trial. Furthermore, the out-of-state counsel was permitted to sit at counsel table and assist in-state co-counsel during the remainder of the trial, and nothing prohibited defendant from meeting with counsel. Copes v. State, — So. 3d —, 2021 Miss. App. LEXIS 54 (Miss. Ct. App. Feb. 2, 2021).

FEDERAL RULES OF APPELLATE PROCEDURE WITH FIFTH CIRCUIT RULES AND INTERNAL OPERATING PROCEDURES

Federal Rules of Appellate Procedure, Effective July 1, 1968, as amended to December 1, 2018), Fifth Circuit Rules and Internal Operating Procedures (IOP) (As amended through April, 2018)

Rule
FRAP 35. En banc determination. I.O.P

Rule
FRAP 40. Petition for panel rehearing.

FRAP 35. En banc determination.

(a) *When hearing or rehearing en banc may be ordered.* A majority of the circuit judges who are in regular active service and who are not disqualified may order that an appeal or other proceeding be heard or reheard by the court of appeals en banc. An en banc hearing or rehearing is not favored and ordinarily will not be ordered unless:

(1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or

(2) the proceeding involves a question of exceptional importance.

(b) *Petition for hearing or rehearing en banc.* A party may petition for a hearing or rehearing en banc.

(1) The petition must begin with a statement that either:

(A) the panel decision conflicts with a decision of the United States Supreme Court or of the court to which the petition is addressed (with citation to the conflicting case or cases) and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions; or

(B) the proceeding involves one or more questions of exceptional importance, each of which must be concisely stated; for example, a petition may assert that a proceeding presents a question of exceptional importance if it involves an issue on which the panel decision conflicts with the authoritative decisions of other United States Courts of Appeals that have addressed the issue.

(2) Except by the court's permission:

(A) a petition for an en banc hearing or rehearing produced using a computer must not exceed 3,900 words; and

(B) a handwritten or typewritten petition for an en banc hearing or rehearing must not exceed 15 pages.

(3) For purposes of the page limit in Rule 35(b)(2), if a party files both a petition for panel rehearing and a petition for rehearing en banc, they are considered a single document even if they are filed separately, unless separate filing is required by local rule.

(c) *Time for petition for hearing or rehearing en banc.* A petition that an appeal be heard initially en banc must be filed by the date when the appellee's brief is due. A petition for a rehearing en banc must be filed within the time prescribed by Rule 40 for filing a petition for rehearing.

(d) *Number of copies.* The number of copies to be filed must be prescribed by local rule and may be altered by order in a particular case.

(e) *Response.* No response may be filed to a petition for an en banc consideration unless the court orders a response. The length limits in Rule 35(b)(2) apply to a response.

(f) *Call for a vote.* A vote need not be taken to determine whether the case will be heard or reheard en banc unless a judge calls for a vote. (Amended effective December 1, 2005; amended effective December 1, 2016; December 1, 2020.)

I.O.P.

Petition for Rehearing En Banc

Extraordinary Nature of Petitions for Rehearing En Banc. — A petition for rehearing en banc is an extraordinary procedure that is intended to bring to the attention of the entire court an error of exceptional public importance or an opinion that directly conflicts with prior Supreme Court, Fifth Circuit or state law precedent, subject to the following: Alleged errors in the facts of the case (including sufficiency of the evidence) or in the application of correct precedent to the facts of the case are generally matters for panel rehearing but not for rehearing en banc.

The Most Abused Prerogative. — Petitions for rehearing en banc are the most abused prerogative of appellate advocates in the Fifth Circuit. Fewer than 1% of the cases decided by the court on the merits are reheard en banc; and frequently those rehearings granted result from a request for en banc reconsideration by a judge of the court rather than a petition by the parties.

Handling of Petition by the Judges

Panel Has Control. — Although each panel judge and every active judge receives a copy of the petition for rehearing en banc, the filing of a petition for rehearing en banc does not take the case out of the control of the panel deciding the case. A petition for rehearing en banc is treated as a petition for rehearing by the panel if no petition is filed. The panel may grant rehearing without action by the full court.

Requesting a Poll. — Within 10 calendar days of the filing of the petition, any active judge of the court or any member of the panel rendering the decision, who desires that the case be reheard en banc, may notify the writing judge (the senior active Fifth Circuit judge if the writing judge is a non-active member) to this effect on or before the date shown on the clerk's form that transmits the suggestion. This notification is also notice that if the panel declines to grant rehearing, an en banc poll is desired.

If the panel decides not to grant the rehearing after such notice, it notifies the chief judge, who then polls the court by written ballot on whether en banc rehearing should be granted.

Requesting a Poll on Court's Own Motion. — Any active member of the court or any member of the panel rendering the decision may request a poll of the active members of the court whether rehearing en banc should be granted, whether or not a party filed a petition for rehearing en banc. A requesting judge ordinarily sends a letter to the chief judge with copies to the other active judges of the court and any other panel member.

Polling the Court. — When a request to poll the court is made, each active judge of the court casts a ballot and sends a copy to all other active judges of the court and any senior Fifth Circuit judge who is a panel member. The ballot indicates whether the judge voting desires oral argument if en banc is granted.

Negative Poll. — If the vote is unfavorable to the grant of en banc consideration, the chief judge advises the writing judge. The panel originally hearing the case then enters an appropriate order.

Affirmative Poll. — If a majority of the judges in active service who are not disqualified, vote for en banc hearing or rehearing, the chief judge instructs the clerk as to an appropriate order. The order indicates a rehearing en banc with or without oral argument has been granted, and specifies a briefing schedule for filing of en banc briefs. The appellant's en banc brief will have a blue cover; The appellee's en banc brief will have a red cover.

Every party must then furnish to the clerk 20 additional copies of every brief the party previously filed.

No Poll Request. — If the specified time for requesting a poll has expired and the writing judge of the panel has not received a request from any active member of the court, or other panel member, the judge may take such action deemed appropriate on the petition. However, in the order disposing of the case and the petition, the panel's order denying the petition for rehearing en banc must show no poll was requested.

Capital Cases. — Consistent with long established legal principle and uniformly followed practice, the filing of a petition for rehearing (or hearing) en banc does not constitute or operate as a stay of execution and does not preclude carrying out an execution.

Timely petitions for rehearing (or hearing) en banc which are filed in a capital case while a scheduled execution date is pending and less than 22 calendar days before the scheduled date will be processed and distributed in the manner prescribed by the chief judge or delegee. The Chief Judge or delegee may order expedited consideration thereof and set a time limit for each judge eligible to vote thereon to advise the chief judge or delegee whether to call for a poll and whether (if a poll is or were to be timely requested by any judge) the judge would vote for or against rehearing (or hearing) en banc, and the petition for rehearing (or hearing) en banc will be disposed of accordingly. If no poll is timely requested, or if a poll results in no rehearing (or hearing) en banc, the panel may enter an order denying rehearing (or hearing) en banc. If a poll results in a grant of rehearing (or hearing) en banc, the chief judge, or

delegee, will enter an order staying the execution pending further order of the court.

Non-Dispositive Orders in Cases Other Than Capital Case Appeals. The Fed. R. App. covering rehearings en banc do apply to interlocutory orders of this court issued pursuant to Fed. R. App. P. 8. The filing of a petition for rehearing en banc does not operate as a stay of the rule 8 order. Timely petitions for rehearing en banc will be processed in the manner prescribed by the chief judge or delegee. The chief judge or delegee may expedite the en banc rehearing procedure and vote as necessary. If a poll is taken, the results shall be handled in the same manner as other en banc polls, except that restrictions may be placed on the timing of orders or opinions concerning the results. (I.O.P. amended effective January 1, 2020.)

FRAP 40. Petition for panel rehearing.

(a) *Time to file; contents; response; action by the court if granted.*

(1) *Time.* Unless the time is shortened or extended by order or local rule, a petition for panel rehearing may be filed within 14 days after entry of judgment. But in a civil case, unless an order shortens or extends the time, the petition may be filed by any party within 45 days after entry of judgment if one of the parties is:

(A) the United States;

(B) a United States agency;

(C) a United States officer or employee sued in an official capacity; or

(D) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf — including all instances in which the United States represents that person when the court of appeals' judgment is entered or files the petition for that person.

(2) *Contents.* The petition must state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended and must argue in support of the petition. Oral argument is not permitted.

(3) *Response.* Unless the court requests, no response to a petition for panel rehearing is permitted. Ordinarily, rehearing will not be granted in the absence of such a request. If a response is requested, the requirements of Rule 40(b) apply to the response.

(4) *Action by the court.* If a petition for panel rehearing is granted, the court may do any of the following:

(A) make a final disposition of the case without reargument;

(B) restore the case to the calendar for reargument or resubmission; or

(C) issue any other appropriate order.

(b) *Form of petition; length.* The petition must comply in form with Rule 32. Copies must be served and filed as Rule 31 prescribes. Unless the court permits or a local rule provides otherwise, a petition for panel rehearing must not exceed 15 pages. Except by the court's permission:

(1) a petition for panel rehearing produced using a computer must not exceed 3,900 words; and

(2) a handwritten or typewritten petition for panel rehearing must not exceed 15 pages. (Amended effective December 1, 2011; amended effective December 1, 2016; amended effective December 1, 2020.)

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UNIFORM LOCAL RULES OF THE UNITED STATES BANKRUPTCY COURTS FOR THE NORTHERN AND SOUTHERN DISTRICTS OF MISSISSIPPI

Originally adopted February 1, 2010; as amended December 1, 2020

Rule
1001-1. Scope of Rules and Forms; Short Title.
3007-1. Objections to Claims.
4001-1. Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements.
4002-1. Duties of Debtor.

Rule 1001-1. Scope of Rules and Forms; Short Title.

(a) These rules ("Local Rules") shall be known as the "Uniform Local Rules of the United States Bankruptcy Courts for the Northern and Southern Districts of Mississippi." The Local Rules may be cited as "Miss. Bankr. L.R. ____."

(b) These Local Rules govern proceedings in the United States Bankruptcy Courts for the Northern and Southern Districts of Mississippi in accordance with section 105(a) of the Bankruptcy Code[1] and Fed. R. Bankr. P. Rule 9029. The application of these Local Rules may be modified by the court in any given case or proceeding in the interest of justice.

(c) These Local Rules, as originally adopted with an Effective Date of February 1, 2010, along with amendments approved by Orders of the bankruptcy judges, shall be effective as of December 1, 2020.

(d) All prior local rules and all standing orders or general orders issued prior to February 1, 2010, by the United States Bankruptcy Courts for the Northern and Southern Districts of Mississippi shall be repealed. The repeal of any prior rule or order shall not affect any act done pursuant to or obviate any act required by any prior local rule or order. These Local Rules govern all cases filed on and after the Effective Date. They shall also apply to cases and proceedings pending on the Effective Date, except to the extent that the court finds they would not be feasible or would work an injustice.

(e) Nothing in these Local Rules precludes the bankruptcy courts from entering general standing orders or guidelines to supplement these Rules.

(f) The bankruptcy courts, by Standing Orders, may adopt Mississippi Local Rules Forms for stated purposes. Ordinarily, these Local Forms shall be used in their given format with only such minor alterations as necessary to accommodate other word processing and printing equipment.

(g) All attorneys practicing before the bankruptcy courts for the Northern and Southern Districts of Mississippi shall acquaint themselves with these

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[1]Unless otherwise noted, all references to the "Bankruptcy Code" or to "section ____" shall be references to Title 11 of the United States Code.

Local Rules. Attorneys shall be subject to appropriate sanctions for failure to comply with these Local Rules, and nothing contained herein shall limit the authority of the bankruptcy courts to impose appropriate sanctions for failure to comply with these Local Rules, Bankruptcy Code, the Federal Rules of Bankruptcy Procedure or other applicable law. (Amended effective January 1, 2012; amended effective December 1, 2014; amended effective December 1, 2016; amended December 1, 2017; amended June 1, 2018; amended effective December 1, 2019; amended effective December 1, 2020.)

Rule 3007-1. Objections to Claims.

(a) *Time and Manner of Service.*

(3) *Minimum information for objection to claims; requirements.* An objection to a claim shall include, at a minimum, the following information:

(A) the name of claimant;

(B) the claim number as indicated on the claims docket maintained by the clerk;

(C) the claim amount;

(D) the basis for the objection; and

(E) the amount of the claim, if any, to which there is no objection.

(4) *Notice; hearing.*

Objections to claims are contested matters and may be considered after notice and opportunity for a hearing. The objecting party shall file and serve a copy of the objection with notice of a 30-day response period to the claimant, the debtor or debtor in possession, the trustee and as otherwise required by Fed. R. Bankr. P. 3007. If a timely response to a claims objection is filed, a hearing on the claims objection will be conducted in accordance with Fed. R. Bankr. P. 3007. (Amended effective December 1, 2014; amended effective December 1, 2017; amended effective December 1, 2020.)

Rule 4001-1. Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements.

(a) *Relief from stay; prohibiting or conditioning the use, sale, or lease of property.*

(1) *Motion.*

(A) *Service.* A motion pursuant to section 362(d) and Fed. R. Bankr. P. Rule 4001(1) seeking relief from the automatic stay shall be served in the manner provided for by Fed. R. Bankr. P. Rules 9014 and 7004. Additionally, unless otherwise ordered by the court, such motion shall be served on any entity having a known lien on the subject property (excluding ad valorem taxing authorities) or that will be affected by the relief requested in the motion; on the United States Trustee; on the case trustee; on any chapter 11 creditors' committee (or its agent); on the creditors listed pursuant to Fed. R. Bankr. P. Rule 1007 (only in the absence of duly appointed creditors' committees); and on any person or entity who has filed a request for the receipt of all notices in the

case or proceeding and who has served such requests on the trustee or debtor in possession.

(B) *Supporting documentation.* When a motion seeking relief from the automatic stay is filed, the moving party shall include in the motion and/or attach to the motion the following:

(i) A description of the subject property;

(ii) A complete and legible copy of movant's security agreements and security instruments which establish a valid lien encumbering the subject property;

(iii) The value of the subject property and the basis of the valuation; and,

(iv) The amount of the outstanding indebtedness secured by each lien encumbering the subject property as reflected by the schedules of the debtor(s) or such other amount as may be known by the movant.

(C) *Initial 4001-1 conference.* The attorneys for movant or any objecting parties shall confer with respect to the issues raised by the motion in advance of the hearing for the purpose of determining whether a consensual order may be entered and/or for the purpose of stipulating to relevant facts, such as the value of the property and the extent and validity of any security instrument.

(D) *Agreed order.*

(i) If the moving creditor, the debtor(s) and the trustee agree as to the relief to be granted and if relief from the automatic stay as well as abandonment is not contested, an agreed order signed by the debtor(s) or the attorney for the debtor(s), the trustee and the moving creditor shall be submitted to the court for consideration no later than 14 days after the date scheduled for hearing on the subject motion. Parties to whom the order or judgment has been submitted shall promptly sign it or promptly contact the party who drafted it to express any objection to the form of the proposed order or judgment. The parties shall attempt to resolve any differences in the form of the order or judgment before submitting competing orders or judgments to the court.

(ii) As provided by Fed. R. Bankr. P. Rule 4001(d)(4), the court may direct that the procedures prescribed by Fed. R. Bankr. P. Rule 4001(d)(1)-(3) shall not apply and the agreement may be approved without further notice if the court determines that a motion made pursuant to Fed. R. Bankr. P. Rule 4001(a)-(c) was sufficient to afford reasonable notice of the material provisions of the agreement and an opportunity for a hearing; otherwise, notice of the proposed agreed order shall be given to the appropriate creditors and parties in interest.

(E) *Order Affecting Real Property.* Any Order affecting real property shall either incorporate the legal description of the real property in the body of the order itself, or attach a legal description of the real property as an exhibit to the order. This paragraph shall not apply to an Order to confirm a chapter 13 plan.

(3) *Waiver or Reduction of Stay of Order.* Any proposed order granting relief from the automatic stay may not waive or reduce the 14-day stay unless the motion for relief from the automatic stay specifically states the basis for the waiver or reduction, although the moving creditor, debtor(s), and the trustee

may agree to waive or reduce the 14-day stay. The Court may require that a hearing be held on a request for a waiver or reduction of the 14-day stay.

(b) *Use of Cash Collateral and Financing Orders.*

(1) *Motion.*

(A) *Financing Motions.* Except as provided herein or in the Local Rules, all cash collateral and financing requests under 11 U.S.C. §§ 363 and 364 shall be heard by motion filed under Fed. R. Bankr. P. 2002, 4001 and 9014 ("Financing Motions"). All Financing Motions filed as an expedited or emergency matters, including specifically First Day Motions as defined in Miss. Bankr. L.R. 9014-1 shall comply with Miss. Bankr. L.R. 9013-1(f) and 9014-1, in addition to this rule.

(B) *Provisions to be Highlighted.* All Financing Motions must (a) recite whether the proposed form of order and/or underlying cash collateral stipulation or loan agreement contains any provision of the type indicated below, (b) identify the location of any such provision in the proposed form of order, cash collateral stipulation and/or loan agreement and (c) justify the inclusion of such provision:

(i) All of the provisions described in Fed. R. Bankr. P. 4001(c)(1)(B) and (d)(1)(B).

(ii) A complete and legible copy of movant's security agreements and security instruments which establish a valid lien encumbering the subject property;

(iii) Provisions that deem prepetition secured debt to be postpetition debt or that use postpetition loans from a prepetition secured creditor to pay part or all of that secured creditor's prepetition debt, other than as provided in 11 U.S.C. § 552(b);

(iv) Provisions that provide disparate treatment for the professionals retained by a creditors' committee from those professionals retained by the debtor with respect to a professional fee carve-out;

(v) Provisions that prime any secured lien without the consent of that lienor;

(vi) Provisions that grant liens on the debtor's property that is unencumbered by consensual liens;

(vii) Provisions that grant the secured creditor the right to exercise remedies upon a default by the debtor, without notice to the debtor and other parties-in-interest, a hearing, and further order of the court; and

(viii) Provisions or findings of fact that purport to bind a later appointed trustee to the agreement of the debtor.

(C) All Financing Motions shall also provide a summary of the essential terms of the proposed use of cash collateral and/or financing (e.g., the maximum borrowing available on a final basis, the interim borrowing limit, borrowing conditions, interest rate, maturity, events of default, use of funds limitations and protections afforded under 11 U.S.C. §§ 363 and 364).

(D) *Interim Relief.* When Financing Motions are filed with the Court on or shortly after the petition date, the Court may grant interim relief pending review by interested parties of the proposed debtor-in-possession financing arrangements. Such interim relief shall be only what is necessary to avoid

immediate and irreparable harm to the estate pending a final hearing. In the absence of extraordinary circumstances, the Court will not approve interim financing orders that include any of the provisions previously identified in Sections (1)(A)(i)-(viii).

(E) *Final Orders.* A final order shall be entered only after notice and a hearing under Fed. R. Bankr. P. 4001. Ordinarily, the final hearing shall be held at least five (5) business days following the organizational meeting of the creditors' committee contemplated by 11 U.S.C. § 1102.

(c) *Obtaining Credit.* The provisions of subpart (b) of this rule shall apply to all motions filed requesting credit under 11 U.S.C. § 364 except as set forth in 4002-1(b)(6).

(e) *Procedure Regarding Motion to Extend the Automatic Stay Pursuant to Section 362(c)(3)(B).*

(1) Any party in interest seeking a continuation of the automatic stay pursuant to 11 U.S.C. §362(c)(3)(B), shall file, in accordance with Fed. R. Bank. Pro. Rule 9013, a motion and proposed order. The movant shall state whether continuation of the automatic stay is sought with respect to all creditors or, if less than all creditors, shall specify the creditor(s) with respect to whom the continuation of the automatic stay is sought. The movant also shall set forth facts to establish that the filing of the present bankruptcy case was in good faith.

(A) Motion to extend the automatic stay pursuant to § 362(c)(3)(B) must be filed within 7 days after the date of the filing of the petition.

(B) Pursuant to 28 U.S.C. § 1746, the debtor must file a *Declaration in Support of the Motion* (the "Declaration") as an attachment to the motion. The Declaration shall be in the form as prescribed by the Clerk.

(C) The debtor must serve a copy of the motion and Declaration on all parties against whom the debtor seeks to continue the stay within 2 days after the filing of the motion and Declaration and file a certificate of service with the clerk.

(2) For a motion to continue the automatic stay filed on or within 7 days of the date of filing the petition, the court shall set a hearing date no later than 30 days after the filing of the petition. For a motion to continue the automatic stay filed more than 7 days after the date of the filing of the petition, the court shall set a hearing date with not less than 14 days notice. The mere filing of the motion will not extend the automatic stay beyond the 30th day after the filing of the petition. If the hearing date is more than 30 days after the date of the filing of the petition, it is incumbent on the debtor or other party in interest to seek an injunction (through the filing of a complaint and motion for a Temporary Restraining Order) to stop any creditor/lienholder collection efforts which may be scheduled to occur after the 30th day following the filing of the petition, but before the hearing on the motion to continue the automatic stay.

(3) A party in interest opposing a motion for continuation of the automatic stay must file a response to the motion. The opponent shall state specifically why the motion should not be granted or state any conditions or limitations that should be imposed upon granting a continuance of the stay.

(4) In the absence of a timely filed response, and the debtor has filed an appropriate Declaration in support of the Motion, the Court may grant the motion without conducting a hearing.

(f) *Procedure Regarding Motion to Impose the Automatic Stay Pursuant to Section 362(c)(4)(B).*

(1) Any party in interest seeking to impose the automatic stay pursuant to 11 U.S.C. §362(c)(4)(B), shall file, in accordance with Fed. R. Bankr. P. 9013, a motion and proposed order. The movant shall state whether imposing the automatic stay is sought with respect to all creditors or, if less than all creditors, shall specify the creditor(s) with respect to whom imposing the automatic stay is sought. The movant also shall set forth facts to establish that the filing of the present bankruptcy case was in good faith.

(A) Pursuant to 28 U.S.C. § 1746, the debtor must file a *Declaration in Support of the Motion* (the "Declaration") as an attachment to the motion. The Declaration shall be in the form prescribed by the Clerk and made available on the Court's website.

(B) The debtor must serve a copy of the motion and Declaration on all parties against whom the debtor seeks to impose the stay within 2 days after the filing of the motion and Declaration and file a certificate of service with the clerk.

(2) For a motion to impose the automatic stay pursuant to § 362(c)(4)(B), the court shall set a hearing with not less than 14 days notice except under extraordinary circumstance. The mere filing of the motion will not impose the automatic stay. It is incumbent on the debtor or other party in interest to seek an injunction (through the filing of a complaint and motion for a Temporary Restraining Order) to stop any creditor/lienholder collection efforts which may be scheduled to occur before the hearing on the motion to impose the automatic stay.

(3) A party in interest opposing a motion to impose the automatic stay must file a response to the motion. The opponent shall state specifically why the motion should not be granted or state any conditions or limitations that should be imposed upon granting the motion to impose the stay.

(4) In the absence of a timely filed response, and the debtor has filed an appropriate Declaration in support of the Motion, the Court may grant the motion without conducting a hearing. (Amended effective December 1, 2013; amended effective December 1, 2015; amended effective December 1, 2017; amended effective June 1, 2018; amended effective December 1, 2020.)

Rule 4002-1. Duties of Debtor.

(a) *Duties prior to filing petition and schedules.* Prior to filing the petition, schedules and statement of financial affairs, the attorney for the debtor shall review the petition, schedules and statement of financial affairs to determine that:

(1) The current official form has been used;

(2) The petition, schedules and statement of financial affairs have been completed and all information provided by the debtor has been accurately listed;

(3) A statutory citation is stated for all state and federal exemptions claimed;

(4) The debtor and the debtor's attorney have signed the petition at all appropriate places and the debtor has signed the schedules and the statement of financial affairs at all appropriate places; and

(5) A notice of alternative chapters under which an individual debtor(s) may proceed has been properly executed by the debtor(s) and filed with the bankruptcy petition in all individual cases.

(b) *Duties after filing petition and schedules.*

(1) After filing the petition, the attorney shall fully cooperate with the trustee in the performance of the trustee's duties and shall keep the trustee advised of all matters pertinent to the Debtor and the administration of the estate.

(2) If the debtor operates a business, the attorney shall assist the trustee in obtaining all business records, ledgers, journals and cancelled checks of the debtor, all keys to the debtor's business, insurance policies, leases and contracts of the debtor. At the request of the trustee, such items shall be delivered by the debtor to the trustee.

(3) The attorney shall determine whether the debtor wishes to retain any assets subject to a security interest or lien, and, if so, shall contact each such creditor to determine the fair value of the collateral and whether the creditor desires for the debtor to redeem the collateral or to reaffirm the indebtedness secured by the collateral. The attorney shall determine whether such collateral is exempt property; whether there is any equity in the property for the debtor's estate; whether the property is redeemable under section 722 and whether a reaffirmation is in the best interest of the debtor.

(4) The attorney shall appear at all meetings of creditors, prepared to inform the trustee and/or the presiding officer of any agreements to redeem personal property between the creditors and the debtor.

(5) At the time of the filing of the petition, the attorney shall notify the United States Trustee if the estate of the debtor contains assets that need to be preserved or protected.

(6) In a chapter 13 case, a debtor not engaged in business seeking to incur postpetition debt, shall file, in accordance with Fed. R. Bankr. P. 9013, a motion and proposed order.

(c) *Debtor's duty to provide personal identification upon excused absence from section 341 meeting.* When a debtor seeks to obtain an excused absence from attending the first meeting of creditors, the debtor shall file a motion to be excused from attending the section 341 meeting. In addition, the debtor shall provide to the case trustee the personal identification required by Fed.R. Bankr. P. Rule 4002(b)(1)(A) and (B), but to avoid that personal identification becoming a public record in connection with the seeking of an excused absence of the debtor from attending a section 341 meeting, in lieu of bringing the specified personal identification to the meeting of creditors, the debtor or the attorney for the debtor shall provide to the case trustee under sealed cover: (i) a picture identification issued by a governmental unit or some other personal

identifying information that establishes the debtor's identity; (ii) evidence of social security number(s) or a written statement that such documentation does not exist; or (iii) such other personal identification as may be required by the United States Trustee or the case trustee. The debtor's motion shall affirmatively state that this personal identification has been served on the case trustee. (Amended effective December 1, 2020.)

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